

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:14-CR-269-BR  
No. 5:16-CV-233-BR

YVANTZ PIERRE,	)	
	)	
Petitioner,	)	
	)	
v.	)	ORDER
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

This matter is before the court on petitioner's motion to lift the stay, vacate his conviction on Count 2, and to schedule resentencing on Count 1, in light of the decision in United States v. Davis, 139 S. Ct. 2319 (U.S. 2019). (DE # 64.) The motion indicates that petitioner withdraws the ineffective assistance of counsel claim he raised in his 28 U.S.C. § 2255 motion. (DE # 64, at 3.) The government agrees to the relief petitioner seeks. (See DE # 65.) The instant motion and petitioner's § 2255 motion, (DE # 41), to the extent petitioner alleges a claim based on Johnson v. United States, 135 S. Ct. 2551 (2015), are ALLOWED. The judgment entered 12 March 2015 and petitioner's conviction on Count 2 are VACATED. Count 2 is DISMISSED. The government's motion to dismiss, (DE # 45), is DENIED as moot. Petitioner's *pro se* second § 2255 motion, (DE # 62), is DISMISSED WITHOUT PREJUDICE because petitioner is represented by counsel. Resentencing on Count 1 is SET for 23 September 2019. The U.S. Probation Office is directed to file a memorandum setting forth any revisions to the Presentence

Report, (DE # 26).

This 26 August 2019.

A handwritten signature in green ink, reading "W. Earl Britt", positioned above a horizontal line.

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W. Earl Britt  
Senior U.S. District Judge